

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 4 – Grants

EMERGENCY AMENDMENT

10 CSR 20-4.061 Storm Water Grant and Loan Program

PURPOSE: This amendment revises the regulation to allow delegated entities the ability to receive and administer payments on behalf of subrecipients within their jurisdiction. The payment procedures in paragraph (11)(A)-(E) are revised to incorporate the procedure necessary to make timely distribution of state bond funds.

EMERGENCY STATEMENT: The State of Missouri is authorized to sell bonds for the funding of water pollution control, rural water and sewer grants, and storm water control pursuant to MO. Const. Art. III, §§37(e), 37(g), and 37(h), respectively. The Missouri Department of Natural Resources and the Missouri Clean Water Commission are mandated to implement regulations to govern the disbursement of the appropriated proceeds of such bond sales for the purposes expressly stated therein. Interest on such bonds sold is generally exempt from federal income taxation. The Internal Revenue Code imposes certain requirements relating to the timely expenditure of such bond sale proceeds. This emergency amendment is necessary to modify existing procedures of the Missouri Department of Natural Resources and the Missouri Clean Water Commission so that unspent sale proceeds of outstanding issues of bonds can be made available for expenditure on a more timely basis, in accordance with the requirements of §149 of the Internal Revenue Code (26 U.S.C. §149). The promulgation of this emergency amendment is necessary to enable the State to continue to comply with the provisions of the Internal Revenue Code that govern the existing bonds so that interest thereon remains exempt from federal income tax in accordance with the expectations of the purchasers of such bonds. The promulgation of this emergency rule is also necessary to assure that the unspent sale proceeds of such bonds can be made available for the constitutionally stated purposes which protect public health, safety, and welfare. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Department of Natural Resources and Missouri Clean Water Commission have limited the scope of the emergency amendment to the circumstances creating the emergency, and believe that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 1, 2007, becomes effective March 4, 2007, and expires August 30, 2007.

(2) Definitions.

(A) Commission. The Missouri Clean Water Commission.

(B) **Delegated Entity.** An eligible applicant that has been designated by the department as having sufficient staff and expertise to administer funds to subrecipients within its jurisdiction.

(C) Department. The Missouri Department of Natural Resources.

(*[C/D]*) Force Account. Project planning, design, construction or engineering inspection work performed by the recipient's regular employees and rented or leased equipment.

(*[D/E]*) Storm water coordinating committee (SCC). A local committee or group established by eligible applicants involved in project screening and project selection. In cities over twenty-five thousand (25,000) population, the SCC shall consist of a committee or organizational unit designated by the city manager. In St. Louis City and County, the SCC shall consist of a committee or organizational unit designated by the executive director of the Metropolitan St. Louis Sewer District. In all eligible counties, except St. Louis County, an SCC must be established which is representative of the county government and incorporated municipalities within the county.

(3) General Requirements.

(E) Planning Requirements. All storm water projects must be consistent with a comprehensive storm water management plan approved by the department **or a delegated entity** prior to construction advertising. The geographical extent of the planning area may be determined by the department **or the delegated entity**. Projects which are solely for bank stabilization or erosion control, or other projects as determined by the department **or the delegated entity**, need only provide the items listed in paragraphs (3)(E)2., 4., and 6. The plan should include, but is not limited to:

1. A detailed map of the drainage area showing computed drainage acreage;
2. A narrative, a plan layout and estimated construction costs for each proposed project;

3. Tabulated storm water conceptual design parameters for each drainage area, that is, upstream acres, runoff coefficients, time concentrations, return frequencies and so forth. Computer modeling information may be provided;

4. A recommended project improvement priority list;

5. A determination of the flood elevation changes resulting from each project, unless the Corps of Engineers has committed to remap the area; and

6. An evaluation of limited structural approaches to storm water control. The plan must analyze the use of applied geomorphology and bioengineering techniques to manage storm water. Projects that are only rehabilitation or replacement of existing structures will require an evaluation that addresses reasonable geomorphological alternatives and, if this approach is not taken, a brief discussion why not. For more complex projects, the evaluation should follow guidance provided by the U.S. Army Corps of Engineers Manual EM 1110-4000, Engineering and Design - Sedimentation Investigations of Rivers and Reservoirs or an equivalent guidance manual. Soil bioengineering techniques as described in Bowers, H. 1950, Erosion Control in California Highways, State of California, Department of Public Works, Division of Highways, shall be used unless other appropriate guidance is used and documented. The root

causes of flooding, bed and bank erosion, and sediment deposition should be addressed in this plan. The plan should not exacerbate these problems by:

A. Modifications to stream systems that increase bed and bank erosion in modified stream sections;

B. Cause these impacts in sections that are upstream or downstream of the storm management project;

C. Remove or degrade aquatic habitat;

D. Remove the pollutant removal benefits of vegetated stream corridors;

E. Lead to increased flooding upstream or downstream of the storm water management project. Combinations of measures can be employed to manage storm water and retain important stream functions. "Bioengineering" combines mechanical, biological, and ecological concepts to prevent slope failures and erosion. Bioengineering techniques may use bare root stock, stems, branches or trunks of living plants on eroded slopes. Plantings may be incorporated into such configurations as a live stakings, live fascines, or living cribwall. Vegetative plantings and cuttings may be combined with structural elements such as gabion baskets or rock surface armoring. However, the intent should be to minimize hard structural solutions and allow the rooted plantings to do much of the work to hold the soil in place and retain the natural function of streams to convey storm water. Other storm water management options include environmental easements and land acquisition.

(4) Required Documents. Prior to grant award and/or loan closing, the applicant must submit a completed storm water grant/loan application to the department. The following documents must be submitted and approved by the department **or delegated entity** prior to construction advertising. Some documents may be waived by the department or **delegated entity** on a case-by-case basis if it is determined they are not needed for that project:

(5) Eligible Project Costs. Eligible costs include the following:

(I) Construction costs incurred prior to grant/loan award or DNR letter of commitment are eligible providing the planning and design phases of the project were reviewed and approved by the department **or delegated entity** prior to the final construction payment.

(M) **The reasonable costs of administrative fees incurred by a delegated entity in connection with each grant.**

(/M/N) Costs not included in subsections (5)(A)-(L/M) are eligible if determined by the department to be reasonable and necessary for the project.

(10) Bidding Requirements. This section applies to procurement of construction equipment, supplies and construction services in excess of twenty-five thousand dollars (\$25,000) awarded by the recipient for any storm water project other than costs directly related to force account work.

(C) Departmental concurrence **or concurrence from the delegated entity** with contract award must be obtained prior to the actual contract award if fewer than three (3) bidders submit bids or if the recipient wishes to award the contract to other than the low bidder. The recipient shall forward the tabulation of bids and a recommendation of contract award to the department **or delegated entity** for review. Executed contract documents must be submitted prior to the first grant payment.

(11) Grant Payments.

(A) For *[projects utilizing one year's funding which include construction and whose]* grants **that** are not matched with loans from this program, **full** payment[s] will be made *[in no more than five (5) installments.]* **at the time of the department's receipt of the executed grant award or grant amendment. The following provisions shall apply:**

1. *[For grant awards which include planning, design, and construction in the project scope, the first payment will be made for engineering planning and design with submission of the final invoiced amount or request for allowance, on the reimbursement form provided by the department]* **Except for a delegated authority, the grantee shall establish a separate escrow account with a bank as defined in Chapter 409, Section 409-001.102, RSMo. The requirement to establish an escrow account may be waived for projects that are expected to be complete within three (3) months of grant award.**

2. The *[next three payments may be made when not less than twenty-five percent (25%), fifty percent (50%), and ninety percent (90%) of the construction of the project is completed. Payment must be requested on the form provided by the department and submitted with sufficient documentation. Reimbursement amounts shall be based upon percentage of the grant funds remaining after the first reimbursement is deducted. Projects which include planning only, grant payments will be made in the three installments listed in this subsection based upon invoiced amount]* **full grant amount, less any payments processed prior to the date of this rule, will be paid into the grantee's established escrow account or to the grantee directly if the escrow account requirement has been waived.**

3. *[A final payment may be made when the project is completed and a final inspection is conducted by the department or approval obtained for the management plan.]* **Grant funds paid to the escrow account or to the grantee may be used to pay up to fifty percent (50%) of the costs of section (5) of the rule. No funds may be withdrawn from the escrow account until the following conditions have been met:**

A. Projects involving construction and not paid through a delegated entity must submit and receive departmental concurrence for:

I. Construction plans and specifications, design criteria and storm water management plan prepared in accordance with subsection (3)(E) of this rule.

II. Executed contract documents.

B. All construction contracts must be awarded by December 31, 2007. For grants not paid through a delegated entity, it is the grantee's responsibility to submit the construction documents to the department no later than January 31, 2008. Failure to award the major construction contracts by December 31, 2007 will result in departmental recovery of the full grant amount.

C. For grants for planning projects, the grantee must have all grant funds fully committed to the project by July 1, 2008.

D. Any funds remaining in an escrow account established under this subsection on January 1, 2010 will be recovered by the department.

4. The grantee shall submit the bank statement of the escrow account monthly within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs. For grantees that have received grant funds when the escrow requirement has been waived, documentation shall be submitted within one hundred, twenty (120) days of grant payment.

5. Projects administered through a delegated entity will be paid in accordance with that entity's procedure on file with the department.

(B) [For projects which include basin planning only and whose grants are not matched with loans from this program, reimbursement will be made at 25, 50, 90 and 100% of plan completion as evidenced by invoices.]

(C) Payments at no time shall exceed fifty percent (50%) of the eligible project cost incurred at the time payment is requested.

(D) Any cost of work completed after the final inspection by the department shall not be considered as part of the eligible project cost.

(E)] An audit to verify eligible project costs will be made [at the time of final payment and the grant adjusted downward, if necessary, to reflect actual costs] by the department after the completion of the inspected project. Any funds found not expended for purposes listed in section (5) of this rule will be recovered in addition to any applicable penalties.

AUTHORITY: sections 644.026 and 644.031, RSMo (Cum. Supp. 1998). Original rule filed June 9, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective Mar. 4, 2000, expires Aug. 30, 2007.